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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/562,185	GAUTHEREON ET AL.
	Examiner	Art Unit	
	RYAN D. DONLON	3695	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _19 October 2011_.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _15-18,22-30,32-43 and 66-68_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _15-18,22-30,32-43 and 66-68_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

U.S. Patent and Trademark Office
PTOL-326 (Rev. 08-06)   **Office Action Summary**   Part of Paper No./Mail Date 20111107

DETAILED ACTION

1.   Amendments to claims and specification filed on 19 October 2011 have been

entered. Claims 15-18, 22-30, 32-43 and 66-68 are currently pending and have been

examined.

Examiner's Note on the Amendments

2.   The Examiner reminds the Applicant that the specification (including the abstract

and claims), and any amendments for applications, except as provided for in 37 CFR

1.821 through 1.825, must have text written plainly and legibly either by a typewriter or

machine printer in a nonscript type font (e.g., Arial, Times Roman, or Courier, preferably

a font size of 12) lettering style having capital letters which should be at least 0.3175

cm. (0.125 inch) high, but may be no smaller than 0.21 cm. (0.08 inch) high (e.g., a font

size of 6) in portrait orientation and presented in a form having sufficient clarity and

contrast between the paper and the writing thereon to permit the direct reproduction of

readily legible copies in any number by use of photographic, electrostatic, photo-offset,

and microfilming processes and electronic capture by use of digital imaging and optical

character recognition; and only a single column of text. See 37 CFR 1.52(a) and (b).

3.   The Amendments the Applicant filed on 19 October 2011 contains text which is

not comply with the "sufficient clarity and contrast between the paper and the writing".

The underlined and crossed out portions are too faded and pixilated to allow for optical

character recognition.

4.   For immediate purposes, the claims as presented will suffice, however the
Examiner respectfully requests the Applicant follow rules set forth in 37 CFR 1.52(a)
and (b) in future correspondence.

Specification

5.   The specification is objected to as failing to provide proper antecedent basis for
the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction
of the following is required:

6.   The specification lacks antecedent basis for "managing funds from a plurality of
different investors" that have been allocated to a plurality of asset manager programs"
(see 35 U.S.C. §112 1st rejection below).

7.   Appropriate correction is required.

Claim Rejections - 35 USC §112 1st

8.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of
> making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the
> art to which it pertains, or with which it is most nearly connected, to make and use the same and shall
> set forth the best mode contemplated by the inventor of carrying out his invention.

9.   Claims 15-18, 22-30, 32-43 and 68 are rejected under 35 U.S.C. 112, first
paragraph, as failing to comply with the written description requirement. The claim(s)
contains subject matter which was not described in the specification in such a way as to
reasonably convey to one skilled in the relevant art that the inventor(s), at the time the
application was filed, had possession of the claimed invention.

10.   Specification is directed to:

The present invention attempts to overcome at least one of the problems of the
prior art by providing a method of investing funds including the allocation of
investment funds to asset manager programs wherein the distribution of total
funds available for investment to a plurality of asset manager programs is
effected by performing the method steps of performing a plurality of intermediate
allocations, each intermediate allocation according with a pre-defined rule
established to apportion funds according to an investor's preferred distribution of
investment funds to particular assets or classes of .assets said allocations
forming a network of allocations with intermediate allocations receiving an
apportionment of funds from a superior allocation, and apportions funds to a
subordinate allocation said method- step of allocating funds to subordinate
allocation being repeated until all available funds are allocated to a most
subordinate allocation each most subordinate allocation representing an asset
manager program. (See Page 3 lines 5-18)

From the above cited portion, it is clear the specification is directed to managing (or

investing) "an investor's" funds rather than a plurality of different investors as claimed.

Claim Rejections - 35 USC §112 2nd

11.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

12.   Claims 15-18, and 22-25 are rejected under 35 U.S.C. 112, second paragraph,

as being indefinite for failing to particularly point out and distinctly claim the subject

matter which applicant regards as the invention.

13.   Claim 15 is rejected because it is unclear if the "reception interface" is a

hardware element (e.g. a keyboard or mouse) or merely a software component (e.g.

function interface) the Specification appears to support both interpretations (see page 6

lines 18-22).

14.   Claim 15 is further rejected because it is unclear what are the metes and bounds

of the system. The claims begin by reciting the "a funds management system", but

begins reciting gerunds (e.g. determining, comparing, etc). Such gerunds in a system

claim are commonly interpreted as being functional language of the system unless it is

clear a human is performing those steps, then a question of hybrid claims arises. In the

second determining step of claim 15, the Applicant appears to claim that the

determining is performed by the processor; however portions of this determining step

are clearly performed by "asset managers" interpreted in light of the Specification as

human subject matter. Therefore it is unclear if this human is a component of the

functional language and therefore a component of the system and also a hybrid claim.

15.   Claim 22 is similarly rejected as claim 15 immediately above.

16.   Dependant claims not specifically address are rejected by virtue of depending

from rejected claims.

Claim Rejections - 35 USC § 101

17.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

18.   Claims 15-18, 22-25 and 66 are rejected under 35 U.S.C. 101 because the

claimed invention is directed to non-statutory subject matter.

19.   Claims 15 and 22 appear to incorporate human subject into a system. The "asset

managers" appears to be directed at the "professional asset mangers" (see page 3 lines

19-22). As claims directed towards human beings are not patentable, the claims are

rejected. See 112 2nd rejection above for additional clarity.

20.　　Claims 15 and 22 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

21.　　35 U.S.C. 101 requires that in order to be patentable the invention must be a

"new and useful process, machine, manufacture, *or* composition of matter, *or* any new

and useful improvement thereof" (emphasis added). The applicants claims mentioned

above are intended to embrace or overlap *two* different statutory classes of invention as

set forth in 35 U.S.C. 101. The claims begin by discussing system elements, but

subsequently the claims then deal with the specifics of a method performed by an

"asset manager". "A claim of this type is precluded by the express language of 35

U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the

alternative only", Ex parte Lyell (17 USPQ2d 1548).

22.　　Dependant claims not specifically address are rejected by virtue of depending

from rejected claims.

Claim Rejections - 35 USC § 102

23.　　The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

24.   Claims 15-18, 22-26, 28-30, 32-33, 35-43, 66, 68 are rejected under 35

U.S.C. 102(b) as being anticipated by Ray et al., Pat No. 6,018,722 (hereinafter Ray),

patented on January 25, 2000.

25.   *Claim 15 Construction Notes:* The origin of the funds (i.e. "from multiple different

investors") and the human subject matter provide no structural limitations to the system

as claimed, and therefore provide little probative value. For the purposes of compact

prosecution Examiner provides citations to the relevant portions of the prior art for these

elements.

26.   As per **claim 15:**

         Ray discloses funds investment system for managing funds from a plurality of

different investors that have been allocated to a plurality of asset manager programs

through a plurality of intermediate allocations of the funds the most subordinate

allocations representing the allocation of funds to an asset manager program with all

superior intermediate allocations effected external to any asset manager program, with

each intermediate allocation of funds according to a predefined rule, the system

comprising:

         a reception interface for receiving data relating to the value of the invested funds

held by the plurality of asset manager programs (mutual funds) (see at least column 2

lines 4-47 and 6 lines 13-37);

         at least one processor, coupled to the reception interface, for:

determining the value of intermediate allocations that represent the distribution of
invested funds for each investor (see column 2 lines 10-14), to individual asset manager
programs according to the value data received (see at least column 6 lines 3 through
column 7 line 57);

comparing the determined intermediate allocations with the predefined rules
(allocation model) for same (see at least column 5 lines 33-48, column 8 lines 63-67
and column 9 lines 1-8); and

determining a new allocation of funds to asset managers in accordance with the
predefined rules for intermediate allocations in the event that a variance greater than a
predetermined amount exists between the determined intermediate allocation and the
predefined rules for same wherein the new allocation of funds is achieved by (see at
least column 8 lines 3-14, 54-67 column 9 lines 1-8) buying and selling investment
instruments effected by individual asset managers of one or more of the plurality of
asset manager programs (see at least column 7 lines 4-21, the Examiner notes
"individual asset managers" are interpreted to be human subject matter thus separate
and distinct from the system and further not a limiting structure element of the claimed
system).

27.   As per **claim 16:**

A funds investment system according to claim 15 wherein the determined new
allocation of funds distribution to asset managers is provided to a user by a data output
means, <u>coupled to the at least one processor,</u> thus reporting the new distribution

required to maintain the integrity of the predefined intermediate allocation rules (see at least claim 5 and column 9 lines 29-43).

28.   As per **claim 17:**

A funds investment system according to claim 15 wherein a data input means, coupled to at least one processor, is operated by the user to request a calculation to determine the options that are available to effect the new allocation of funds (see at least the "ÆExpert RIA" system in column 9 lines 29-43).

29.   As per **claim 18:**

A funds investment system according to claim 17 wherein the selection of an option and effecting the transfer of funds between asset managers to accord with the new distribution is automated (see at least column 9 lines 44- 67 and column 10 lines 1- 12 wherein the selection and transfer of funds is automated using a computer).

30.   As per **claim 66:**

A funds investment system according to claim 15 wherein the intermediate allocations are grouped to define categories of allocations said categories being individually managed the at least one processor such that <u>a reception interface, coupled to the at least one processor,</u> receives data relating to the amount of funds allocated to each intermediate allocation and/or each allocation category (see at least column 8

lines 3-14 and column 5 lines 33-48, column 8 lines 63-67 and column 9 lines 1-8).

31.   *Claim 22 Construction Notes:* The origin of the funds (i.e. "from multiple different investors") and the human subject matter provide little patentable weight to the computer program as claimed, and therefore are not limiting to the claims. For the purposes of compact prosecution Examiner provides citations to the relevant portions of the prior art for these elements.

32.   Regarding the portion "execution of the code by the at least one processor actively administering superior allocations for the plurality of investors at lower cost as compared with subordinate allocations for the plurality of investors" appears to be the desired result of the system, as the Specification supports this interpretation (see page 4 lines 3-8), rather than an interpretation wherein the code directly determines the cost.

33.   As per **claim 22:**

        Ray discloses a <u>tangible, non-transitory computer readable medium, comprising computer executable code</u> for execution on at least one processor embodied on a computer readable medium for managing funds from a plurality of different investors that have been allocated to a plurality of asset manager programs through a plurality of intermediate allocations of the funds, the most subordinate allocations representing the allocation of funds to an asset manager program with all superior intermediate allocations effected external to any asset manager program, and where each intermediate allocation accords with a predefined rule wherein said computer <u>executable code</u> includes:

code for receiving data relating to the value of the invested funds from multiple different investors held by the plurality of asset manager programs (see at least column 2 lines 4-47 and 6 lines 13-37 with special attention paid to column 2 lines 10-14);

code for receiving data relating to the value of the invested funds held by the plurality of asset manager programs (mutual funds) (see at least column 2 lines 4-47 and 6 lines 13-37);

code for determining the intermediate allocations representing the distribution of pooled investment funds from multiple different investors to individual asset manager programs according to the value data received (see at least column 6 lines 3 through column 7 line 57);;

code for comparing the determined intermediate allocations with the pre-defined rules (allocation model) for same and determining whether a variance greater than a predetermined amount exists between the determined intermediate allocation and the pre-defined rules for same (see at least column 5 lines 33-48, column 8 lines 3-67, column 9 lines 1-8 and claim 5);

and code for calculating a new allocation of funds to asset managers in accordance with the predefined rules for intermediate allocations (see at least claim 5 and column 9 lines 29-43) wherein the new allocation of funds is achieved by buying and selling investment instruments effected by individual asset managers of one or more of the plurality of asset manager programs (see at least column 7 lines 4-21).

34.   As per **claim 23:**

A <u>tangible, non-transitory computer readable medium</u> according to claim 22
further including computer instruction code for reporting the calculated new allocation of
funds (see at least claim 5 and column 9 lines 29-43).

35.   As per **claim 24:**

A <u>tangible, non-transitory computer readable medium</u> according to claim 23
further including computer instruction code for receiving an instruction from a user to
effect a transfer of funds to each most subordinate allocation to accord with the
calculated new allocation (see at least the "ÆExpert RIA" system in column 9 lines 29-
43).

36.   As per **claim 25:**

A <u>tangible, non-transitory computer readable medium</u> according to claim 23
further including computer instruction code for transferring funds to accord with the new
allocation (this claim introduces no substantial limitation over that of claim 24 and is
therefore rejected under a similar rationale).

37.   As per **claim 26:**

A method of investing funds from a plurality of different investors in a data
communications network including communication devices enabling communication
between a user and a funds investment system, the funds being invested with asset

manager programs by distributing funds from the plurality of different investors (see at least column 2 lines 10-14) available for investment to a plurality of asset manager programs ("mutual funds") (see at least column 2 lines 40-48) said distribution effected by a step of performing a plurality of intermediate allocations by at least one processor, the most subordinate allocations representing the allocation of funds to an asset manager program with all superior intermediate allocations effected external to any asset manager program, each intermediate allocation according with predefined rules (allocation model) supplied to the system by the user over the communications network (see at least column 4 lines 66-67 and column 5 lines 1-19) and repeating the step of performing a plurality of intermediate allocations until all available funds (allocating an account) from the plurality of different investors are allocated through the intermediate allocations of the funds to the asset manager programs (see at least column 5 lines 33-48, column 8 lines 3-67, column 9 lines 1-8, claims 1 and 5 and column 8 lines 3-14).

38.   As per **claim 28:**

A method according to claim 26 wherein the predefined rules for intermediate allocations are established to apportion funds according to an investor's preferred distribution (allocation model) of investment funds to particular assets or classes of assets (see at least column 4 lines 66-67 and column 5 lines 1-19).

39.   As per **claim 29:**

A method according to claim 26 wherein the intermediate allocations (mutual

funds) form a network of allocations and an intermediate allocation receives an apportionment of funds from a superior allocation (an account) and apportions funds to a subordinate allocation (see at least column 2 lines 40-48, column 8 lines 3-14).

40.   As per **claim 30:**

A method of investing funds from a plurality of different investors in a data communications network including communications devices enabling communications between a user and a funds investment system by distributing total funds available for investment to a plurality of asset manager programs through tiered allocations of the funds, the most subordinate allocations representing the allocation of funds to an asset manager program with all superior intermediate allocations effected external to any asset manager program, said distribution effected by a step of performing a plurality of intermediate allocations by at least one processor each intermediate allocation according with predefined rules supplied to the system by the user over communications network and repeating the step of performing a plurality of intermediate allocations until all available funds are allocated with asset manager programs:

wherein the method includes the step of receiving from asset managers, to whom the funds from multiple different investors (see column 2 lines 10-14) have been allocated, a valuation of the invested funds (see column 2 lines 10-14 where multiple different investors participate and column see column 5 lines 49-58 wherein in an investor's pooled funds are valued) in each of the asset manager programs and determining a value at each superior intermediate allocation, the value being

determined from valuations at subordinate allocations (see at least "account value"

column 5 lines 45-58; column 6 lines 3 through column 7 line 57; column 8 lines 3-14

and claim 1 which shows gathering a valuation of the invested funds (market value) of

the plurality of securities).

41.   As per **claim 32:**

        A method according to claim 30 wherein the valuation of intermediate allocations

occurs periodically (see at least column 4 lines 46-55).

42.   As per **claim 33:**

        A method according to claim 30 wherein the valuation of intermediate allocations

occurs as a result of a predefined trigger (daily) (this claim introduces no substantial

limitation over that of claim 32 and is therefore rejected under a similar rationale).

43.   As per **claim 35:**

        A method according to claim 30 wherein the valuations of the intermediate

allocations may be compared with the predefined allocation rules to determine the

extent of variance with respect to those rules (see at least column 8 lines 3-14 and

claim 5).

44.   As per **claim 36:**

        A method according to claim 30 wherein the method includes rules relating to the

allowable variance of allocation valuations as compared with the predefined rules regarding intermediate allocations and in the event that the allowable variance is exceeded, a warning (buy or sell recommendation) is provided (see at least column 8 lines 3-14, 54-67 column 9 lines 1-8 and claim 5).

45.   As per **claim 37:**

A method according to claim 36 wherein the allowable variance is exceeded and the method includes the generation of recommended actions for the distribution of investment funds in order to bring the distribution of funds into agreement with the pre-defined allocation rules (see at least column 8 lines 3-14, 54-67 column 9 lines 1-8 and claim 5.

46.   As per **claim 38:**

A method according to claim 37 wherein the recommended actions include the provision of recommended buy and sell orders with respect to particular securities (see at least column 8 lines 3-14, 54-67 column 9 lines 1-8).

47.   As per **claim 39:**

A method according to either claim 37 wherein the method includes the step of providing a simulated valuation of the intermediate allocations and the funds invested with individual asset manager programs that would most likely result from executing the

recommended actions (see at least figure 3 and column 3 description of "FIG 3").

48.   As per **claim 40:**

A method of managing invested funds from a plurality of different investors in a
data communications network including communication devices enabling
communication between a user and an investment funds system, the funds having been
allocated to a plurality of asset manager programs through tiered intermediate
allocations of the funds the most subordinate allocations representing the allocation of
funds to an asset manager program with all superior intermediate allocations effected
external to any asset manager program, with each intermediate allocation according
with a predefined rule communicated to the system by the user, the method including:

obtaining data relating to the value of pooled investment funds from multiple
different investors allocated to the plurality of asset manager programs;

calculating using at least one processor the intermediate allocations representing
the distribution of funds to individual asset manager programs according to the value
data obtained;

comparing using at least one processor the calculated intermediate allocations
with the pre-defined rules for same;

and in the event that a predefined variance between the calculated intermediate
allocation and the predefined rule for same is exceeded, calculating a new allocation of
funds to asset managers in accordance with the pre-defined rules for intermediate
allocations;

wherein the new allocation of funds is achieved by buying and selling investment

instruments effected by individual asset managers of one ore more of the plurality of

asset manager programs; and

49.   This claim is rejected under the same rationale as claim 15.

50.   As per **claim 41:**

        A method according to claim 40 wherein the requirement to perform a new

calculation of funds distribution to asset managers is communicated to the user as

warning (buy or sell recommendation) that action is required to maintain the integrity of

the pre-defined intermediate allocation rules (see at least column 8 lines 3-14, 54-67

column 9 lines 1-8 and claim 5).

51.   As per **claim 42:**

        A method according to claim 40 wherein the funds investment system determines

the options available (buy or sell recommendations) to effect the new distribution of

funds and communicates same to the user for consideration (see at least column 8 lines

3-14, 54-67 column 9 lines 1-8 and claim 5).

52.   As per **claim 68:**

        Ray discloses a method according to claim 40 wherein intermediate allocations

are grouped to define categories of allocations, the method including the step of

reporting the amount of funds allocated to each intermediate allocation and/or allocation

category thus enabling the allocation categories to be individually managed. (For the

purposes of prosecution the phrase "thus enabling the allocation categories to be

individually managed" does not further limit the scope of the claim, since this phrase

does not positively recite a limitation, but rather the intended consequence of

implementing the claim. See at least column 8 lines 3-14 and lines 63-67; column 9

lines 1-8; and column 5 lines 33-48, wherein it is disclosed that the allocations are used

to develop reports).

53.   As per **claim 43:**

  A method according to claim 42 wherein the user selects at least one of the

available options and communicates the selection to the funds investment system, said

funds investment system upon receiving said selection effecting transfer of funds to

effect the new distribution of funds (see at least column 9 lines 66-67 and column 10

lines 1-12).

Claim Rejections - 35 USC § 103

54.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

55.   Claim 27, 34 and 67 is rejected under 35 U.S.C. 103(a) as being unpatentable

over Ray as applied to claim 26 above.

56.　　As per **claim 27:**

Ray does not disclose a method according to claim 26 wherein the communication devices used by the user include any one or more of the following:

a laptop personal computer;

a notebook personal computer;

a wireless laptop personal computer;

a wireless notebook personal computer;

a cell phone;

or a cell phone having connection facilities to the data communications network. However Ray does disclose the use of a personal computer (see at least column 9 lines 44-65). The use of a laptop personal computer is a well known improvement over the use of a desktop computer and applying this improvement would have been well with in the means of one of ordinary skill at the time of the invention. Therefore it would have obvious to improve the system for investing of Ray, by the simple substitution the use of a personal computer for the use of a laptop to obtain predictable results. Thus, the simple substitution of one known element for another producing a predictable result renders the claim obvious.

57.　　As per **claim 67:**

A <u>tangible, non-transitory computer readable medium</u> embodied on a computer readable medium according to claim 22 wherein intermediate allocations are grouped to

define categories of allocations, the computer program including code for reporting the

amount of funds allocated to each intermediate allocation and/or allocation category

thus enabling the allocation categories to be individually managed.

58.   As per **claim 34:**

Ray does not teach a method according to claim 33 wherein the predefined

trigger is a value of funds with an asset manager program exceeding a predetermined

amount. However, Ray does teach valuation triggers (see the rejection to claim 33

above)

Further it would have been obvious to the ordinary practitioner at the time of the

invention to perform a valuation of the holdings of a fund as the result of one or more of

the fund's holdings significantly changing in value. For example, many asset managers

invest a fund's financial holdings using strategies consisting of a balancing a fund's

holdings across various asset classes (e.g. energy, health care, commodities, etc).

Each asset class is typically assigned percentage of the total value of the funds

holdings as a target (e.g. 33% energy, 33% health care, 34% commodities). The fund

will then invest in various assets in an asset class such that the total value of the

various assets in an asset class meet the target percentage of the total value of the

entire fund, thus the implementing the fund's strategy. When the value of a particular

asset in the fund's holdings grows (or falls) suddenly (say because of a merger or an

new business venture), a portfolio manager will perform a valuation of the fund's

holdings to determine the change in the value of the particular asset in question places the funds target balance off the target the strategy.

It would have been obvious to one of ordinary skill in the art to include in the method of valuing a fund as the result of a trigger of Ray, the well known method of triggering a valuation as the result of an asset significantly changing in value because this would have allowed for asset managers and investor alike to be notified of the imbalances in their portfolio. Further the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Response to Arguments

59.   Applicant's arguments that "accounts" (plural) necessitates "investors" (plural) is not persuasive. Possession of the invention must be shown by the written description and "does **not extend** to subject matter not disclosed but that would be obvious over what is expressly disclosed". Lockwood v. American Airlines Inc. 41 USPQ 1961. Further, "it must be shown that a person of ordinary skill in the art would have understood, at the time the application was filed, that the description **requires** that limitation".   Hyatt v. Boone 47 USPQ2d 1128. In the instant case "accounts" does not necessitate "plurality of different investors", rather a single investor may have multiple accounts. The Applicant's specification does not require "plurality of different investors"

and therefore lacks support for the claimed invention. This argument applies to "bulking of orders" and "netting of orders".

60.   With respect to previous 35 U.S.C. §112 2nd and §101 rejections, these have been withdrawn. However new rejections have been raised.

61.   Regarding Applicant's arguments alleging Ray does not teach or disclose "a multi-tiered approach as claimed in the present invention." the Examiner respectfully disagrees. There are at least 3 tiers, first a cash account (see column 8 line 54-62 for an example), from which money is allocated according to "BUY" and "SELL" decisions. The "BUY" and "SELL" decisions allocate the investors money into various second tiers according to an asset allocation model (see column 8 lines 54-62).

62.   One of the optional allocations the second tier is a mutual fund (see column 2 lines 40-47). As the Applicant is certainly aware, a Mutual Fund is an open-end investment company that invests money of its shareholders in a usually diversified group of securities of other corporations (defined by Merriam Webster's Dictionary, 11th edition). This mutual fund is an example of a third tier of asset allocation.

Conclusion

63.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

64.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN D. DONLON whose telephone number is (571)270-3602. The examiner can normally be reached on Monday through Friday 9:00am to 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Kyle can be reached on (571) 272-6746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/RDD/
Examiner, Art Unit 3695
November 8, 2011

/Narayanswamy Subramanian/
Primary Examiner, Art Unit 3695